

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 246**

SENATORS JEFFRIES, HAMILTON, WOELFEL, LINDSAY,

STOLLINGS, IHLENFELD, ROMANO, FACEMIRE, AND

PLYMALE, *original sponsors*

[Originating in the Committee on Pensions; reported

on February 13, 2020]



1 A BILL to amend and reenact §51-9-1a, §51-9-5, §51-9-6b, and §51-9-6d of the Code of West  
2 Virginia, 1931, as amended, all relating to including family court judges in the retirement  
3 system for judges; and authorizing family court judges to participate in the retirement  
4 system for judges.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

**§51-9-1a. Definitions.**

1 (a) As used in this article, the term “judge”, “judge of any court of record,” or “judge of any  
2 court of record of this state” means, refers to, and includes family court judges, judges of the  
3 several circuit courts, and justices of the Supreme Court of Appeals. ~~For purposes of this article,~~  
4 ~~the terms do not mean, refer to or include family court judges~~

5 (b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value  
6 computed upon the basis of the mortality table and interest rates as set and adopted by the  
7 retirement board in accordance with the provisions of this article: *Provided*, That when used in  
8 the context of compliance with the federal maximum benefit requirements of Section 415 of the  
9 Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and  
10 interest rates required to comply with those requirements.

11 (c) “Beneficiary” means any person, except a member, who is entitled to an annuity or  
12 other benefit payable by the retirement system.

13 (d) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10d-  
14 1 *et seq.* of this code.

15 (e) “Final average salary” means the average of the highest 36 consecutive months’  
16 compensation received by the member as a judge of any court of record of this state.

17 (f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been  
18 amended.

19 (g) “Member” means a judge participating in this system.

20 (h) "Plan year" means the 12-month period commencing on July 1 of any designated year  
21 and ending the following June 30.

22 (i) "Required beginning date" means April 1 of the calendar year following the later of: (i)  
23 The calendar year in which the member attains age 70 and one-half; or (ii) the calendar year in  
24 which the member retires or otherwise separates from covered employment.

25 (j) "Retirement system" or "system" means the Judges' Retirement System created and  
26 established by this article. Notwithstanding any other provision of law to the contrary, the  
27 provisions of this article are applicable only to family court judges, circuit judges, and justices of  
28 the Supreme Court of Appeals in the manner specified in this article. ~~No service as a family court  
29 judge may be construed to qualify a person to participate in the Judges' Retirement System or  
30 used in any manner as credit toward eligibility for retirement benefits under the Judges'  
31 Retirement System~~

**§51-9-5. Election not to participate, contribute, or be a member; authorized transfers of  
service credit by a judge; duplicate use of service credit prohibited.**

1 (a) Notwithstanding any provisions of this article, any judge may in writing notify the Auditor  
2 within 30 days after he or she takes office, or, if he or she is in office, on the date this article  
3 becomes effective, then within 30 days from such latter date, that such judge elects not to become  
4 a member or make any payments or contributions to the trust fund, in which event every judge,  
5 so electing, shall not thereafter at any time be entitled to receive any retirement pay or benefits  
6 under provisions of this article, and any deduction that may have theretofore been made from the  
7 salary of such judge and paid into the fund shall be refunded without interest, to him or her by the  
8 Auditor by warrant drawn on the trust fund. Any judge who has so elected not to become a  
9 member or not to contribute, shall nevertheless thereafter be permitted to become such member,  
10 contribute, and become eligible for retirement benefits by paying into the Judges' Retirement Fund  
11 all contributions such judge would have been required to pay into the fund, together with interest  
12 thereon at a rate to be determined by the State Auditor as reasonable for such prior periods, as if  
13 such judge had not previously elected not to be a member and not to contribute.

14 (b) There may be transfers of service credit on proper basis between the Judges'  
15 Retirement System and the Public Employees Retirement System, where such service credit  
16 constitutes qualified and eligible credit under the recipient system's statutes, in order to allow full  
17 flexibility of choice of option by a judge or judicial member; but in no case shall benefits be  
18 receivable from more than one of such state retirement systems, nor shall any service credit be  
19 usable more than once and then only in the finally chosen state retirement system.

20 (c) Notwithstanding any provision of this code to the contrary, a family court judge electing  
21 to become a member of the Judges' Retirement System established pursuant to §51-9-1 et seq.  
22 of this code may become a member of the Judges' Retirement System in effect for persons first  
23 participating in the system on and after July 1, 2005, upon successful completion of all  
24 requirements therefor.

**§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges;  
automatic escalation and increase of annuity benefit; proration designation by  
judge permitted.**

1 (a) There shall be paid, from the fund created or continued by §51-9-2 of this code, or from  
2 such funds as may be appropriated by the Legislature for such purpose, an annuity to the  
3 surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement  
4 benefits provided by any of the provisions of this article, or who has, at death, actually served five  
5 years or more as a sitting judge of any court of record of this state, exclusive of any other service  
6 credit to which such judge may otherwise be entitled, and who dies either while in office or after  
7 resignation or retirement from office pursuant to the provisions of this article. Said annuity shall  
8 amount to 40 percent of the annual salary of the office which said judge held at his or her death  
9 or from which he or she resigned or retired. In the event said salary is increased or decreased  
10 while an annuitant is receiving the benefits hereunder, his or her annuity shall amount to 40  
11 percent of the new salary: *Provided*, That with respect to any individual who is appointed or  
12 elected for the first time as judge of a court of record of this state after July 1, 2005, any annuity  
13 to the surviving spouse of the judge shall be an amount equal to 40 percent of the judge's final

14 average salary: *Provided, however,* That the annuitant is not entitled to an increase in benefits by  
15 virtue of any increase in the salaries of the offices of family court judge, circuit court judge, or  
16 justice of the Supreme Court of Appeals. The annuity granted hereunder shall accrue monthly  
17 and shall be due and payable in monthly installments on the first business day of the month  
18 following the month for which the annuity shall have accrued. Such annuity shall commence on  
19 the first day of the month in which said judge dies and shall, subject to the provisions of subsection  
20 (b) of this section, terminate upon the death of the annuitant or shall terminate upon the  
21 remarriage of the annuitant.

22 (b) If there be no surviving spouse at the time of death of a judge who dies after serving  
23 five years or more as a sitting judge of any court of record and such judge leaves surviving ~~him~~  
24 the judge any dependent child or children, such dependent child or children shall receive an  
25 amount equal to 20 percent of the annual salary of the office which said judge held at the time of  
26 his or her death: *Provided,* That the total of all such annuities payable to each such child shall not  
27 exceed in the aggregate an amount equal to 40 percent of such salary. Such annuity shall  
28 continue as to each such child until: (i) He or she attains the age of 18 years; or (ii) attains the  
29 age of 23 years so long as such child remains a full-time student. The Auditor shall by legislative  
30 rule establish the criteria for determining a person's status as a full-time student within the  
31 meaning and intent of this subsection. In the event there are surviving any such judge three or  
32 more dependent children, then each such child's annuity shall be ~~proportionately reduced~~ prorated in  
33 order that the aggregate annuity received by all such dependent children does not exceed 40  
34 percent of such salary and the amount to be so received by any such child shall continue  
35 throughout the entire period during which each such child is eligible to receive such annuity. The  
36 provisions of this subsection shall also apply to those circumstances and situations wherein a  
37 surviving spouse of a deceased judge shall die while receiving benefits pursuant to subsection  
38 (a) of this section and who shall leave surviving dependent children of such deceased judge who  
39 would be entitled to benefits under this subsection as if they had succeeded to such annuity  
40 benefits upon the death of such judge in the first instance. In the event the salary of judges is

41 increased or decreased while an annuitant is receiving benefits pursuant to this subsection, the  
42 annuities payable shall be likewise increased or decreased proportionately to reflect such change  
43 in salary: *Provided, however,* That with respect to any individual who is appointed or elected for  
44 the first time as judge of a court of record of this state after July 1, 2005, any annuity to any  
45 children of the judge shall be calculated with respect to the judge's final average salary: *Provided*  
46 *further,* That the child is not entitled to an increase in benefits by virtue of any increase in the  
47 salaries of the offices of family court judge, circuit court judge, or justice of the Supreme Court of  
48 Appeals. The annuities granted hereunder shall accrue monthly and shall be due and payable in  
49 monthly installments on the same day as surviving spouses' benefits are required to be paid.  
50 Such annuities shall commence on the first day of the month in which any such dependent child  
51 becomes eligible for benefits hereunder and shall terminate on the last day of the month during  
52 which such eligibility ceases.

**§51-9-6d. Adjusted annual retirement benefit calculations.**

1 In calculating the annual retirement benefits under §51-9-6d of this code for any individual  
2 who is appointed or elected for the first time as judge of a court of record of this state after July 1,  
3 2005, the judge shall receive retirement benefits in an amount equal to 75 percent of the  
4 individual's final average salary. The individual is not entitled to an increase in benefits by virtue  
5 of any increase in the salaries of the offices of family court judge, circuit court judge, or justice of  
6 the Supreme Court of Appeals.

NOTE: The bill permits the transfer of family court judges from the public employees' retirement system to the retirement system for judges.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.